UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

DAVID P. DONOVAN,	.	Civil Action No. 1:20cv1344
	.	
Plaintiff,	.	
	.	
vs.	.	Alexandria, Virginia
	.	January 8, 2021
BETH WILKINSON,	.	3:12 p.m.
	.	
Defendant.	.	(OPEN PROCEEDINGS)
	.	
. . . . .	.	

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE IVAN D. DAVIS
UNITED STATES MAGISTRATE JUDGE
(Via ZoomGov)

APPEARANCES:

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(Pages 1 - 35)

(Proceedings recorded by FTR electronic sound recording, transcript produced by computerized transcription.)

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P R O C E E D I N G S

THE CLERK: All right, the Court calls Civil Action No. 20cv1344, Donovan versus Wilkinson. May we have appearances of counsel, please, starting with the plaintiff.

MS. HINGER: Good afternoon, Your Honor. Cathy Hinger appearing for plaintiff, David Donovan. I'm joined by my cocounsel, Claire Rauscher, who you see on the video, as well as Lela Ames, who is also on the Zoom line today.

THE COURT: Good afternoon.

MR. CONNOLLY: Your Honor, good afternoon. This is Tom Connolly, with the law firm of Harris Wiltshire & Grannis. Along with me today is my partner Tom Mason and my partner Jared Marx, and also with us is Kosta Stojilkovic, who is at the Wilkinson law firm, and he's been acting as an internal counsel for us.

THE COURT: Good afternoon.

Now, this is my understanding of what's occurring today: There's been a motion filed by the intervenor, the PFI, for the Court to seal, strike, and reconsider, and I believe that's to seal, strike, and reconsider previous determinations about redactions, was that in the November 25 order?

MR. CONNOLLY: That is correct, Your Honor.

THE COURT: And there was a motion filed, a consent motion to file to close that hearing. Then *The Washington Post* filed -- well, they had filed a motion to intervene in that

hearing as well, which is set to be heard on January 29.

In the interim, they filed a second motion to intervene, which this Court essentially has interpreted as a motion to -- for the Court to reconsider a motion to intervene for the limited purpose of the Court to reconsider its determination to close the hearing on the motion to seal, strike, and reconsider.

Is that everybody's understanding?

MS. SARCHIO: Yes, Your Honor.

MR. CONNOLLY: Yes, Your Honor.

MS. HINGER: Yes, Your Honor.

MS. SARCHIO: Yes, Your Honor. And good afternoon, Your Honor. This is Christina Sarchio on behalf of intervenor Pro-Football, Inc., also doing business as the Washington Football Team.

THE COURT: All right.

MS. SARCHIO: And with me today I have -- sorry. I have Theodore Yale, Neil Steiner, and Amisha Patel with Dechert on Zoom also. Thank you, Your Honor.

THE COURT: Okay. Well, the Court has had an opportunity to review *The Post*'s motion to -- second motion to intervene and all other filings filed either in opposition or in reply, all filings concerning that motion.

Now, so let's begin. Why, why did you -- anything you'd like to add?

MS. HANDMAN: Yes, Your Honor.

MR. CURRAN: Yes, Your Honor. This is Pat Curran from Davis Wright Tremaine for *The Washington Post*, and my colleague, Laura Handman here, will be handling oral argument on behalf of *The Post*.

THE COURT: All right.

MS. HANDMAN: Hi, Your Honor, and good afternoon. And on the phone call is my colleague, Adam Rich from Davis Wright, as well as Kalea Clark, deputy general counsel of *The Washington Post*.

THE COURT: The public access line.

MS. HANDMAN: Yes, um-hum. And thank you, Your Honor, for this opportunity, and you stated it correctly. As you know, there was a motion to close this hearing on Christmas Eve. Your Honor issued the proposed order. We weren't consulted. We were only at that point proposed intervenors, and Your Honor issued the order -- the proposed order closing the entire hearing for today on the 28th, and on the 29th, we filed a second motion to intervene and also motion to expedite, and as Your Honor points out, we did file a reply yesterday to the opposition that was filed on Wednesday.

I -- it's been a long day for you, and I will try and be as brief as possible. The main point and why we think the Court may want to reconsider is that the Court, to the best of our knowledge, was not made aware of the filings on

December 21, 22, and 23 in the Maryland federal litigation between the minority Team -- shareholders of the Team and Mr. Snyder, the majority shareholder of the Team, and those filings disclosed and discussed the 2009 settlement agreement that we don't know for sure but we have reason to believe is at the heart of this injunction proceeding, and I would ask that because of these just recent filings, of course, when Your Honor issued his opinion on November 25 setting forth what should be redacted about a settlement, etc., these disclosures were not in the public record.

And if I -- and even though they were filed just the week before and even though the Team's counsel in that -- in the Maryland case is also the Team -- Mr. Snyder's counsel in the Maryland case and the Team's counsel here, they did not bring those filings to your attention in their motion to close.

We think that they vary significantly on this, and if I might just quickly review what is the Maryland case and what those filings are, it's a fight between the majority and the minority owners about the sale of shares, but as -- it's devolved into a fight over Mr. Snyder claims the minority shareholders are smearing him. They claim he's leaking to the press.

There was a public hearing yesterday conducted by the judge. I think the judge said this had become a scorched earth case and --

THE COURT: Let me stop you there, Ms. Handman.

MS. HANDMAN: Sure.

THE COURT: I don't really care about those cases. All I care about is revolving around those cases is what information do you believe were -- or was disclosed in that process that are the subject of redaction or sealing motions in this case that you believe they've waived the right to seal because they're already in the public domain?

MS. HANDMAN: First of all, the most significant one, I would say, is Mr. Snyder's declaration that he put in on December 23, which the Court said he insisted would not be redacted, and he filed it in the public record. It was in response to the minority shareholders claiming that he had leaked to *The New York Times*, which published a story December 19 which detailed allegations about sexual misconduct that had been made against Mr. Snyder that -- on a flight from Las Vegas to D.C., and that -- the article said that there had been an in-house investigation and outside counsel investigation and that those allegations had not -- did not substantiate it, and the woman who made the allegations was fired for lying to the lawyers and -- but to avoid publicity -- bad publicity, they entered into a financial settlement and a nondisclosure agreement.

So Mr. Snyder -- and routine -- this minority shareholder said that that was so much from Mr. Snyder's

perspective that it suggested that he was the one that leaked that. He replied on the next day, saying he didn't leak to *The Times,* and he attached *The Times* article to his papers.

Then the next day, the 23rd, he filed the supplemental declaration that he insisted be not redacted that said that the allegations were meritless -- these are his words under oath, that they, they -- there was no evidence of wrongdoing found after an investigation by a well-respected firm, and that the insurance carrier had decided to settle, and he attached to his declaration an article by *The Washington Post* on December 22 that reported on a settlement agreement of $1.6 million for sexual misconduct allegations along the lines of what *The Times* said.

That had five signatories. One of them was Mr. Donovan, who had conducted the internal investigation, another one Mr. Snyder's lawyer, a third was Brendan Sullivan, representing the alleged victim, and that while it wasn't clear, the article said whether that is the settlement at issue in this injunction, they noted -- the article noted that Mr. Sullivan had put in a sealed affidavit in support of Ms. Wilkinson in this case.

And this -- these disclosures, in our mind, change the landscape significantly with regard to confidential information relating to the settlement agreement and the investigations, and I cite seven reasons. One is the one Your

Honor made, which is it's now public, and the court in the Fourth Circuit in the *Knight Publishing* said if the public is already aware of it, that is something the court must consider, and indeed, in the *Lifenet* case, which both the Team and Mr. Donovan rely on, there, where -- it involved trade secrets, but where some of the trade secrets have been published in an article, the court said there couldn't be sealing. So that's number one.

Number two, this doesn't involve trade secrets. This is basically reputational harm that's being alleged, and again, the Fourth Circuit in the *Doe* says said that's day-to-day things that happen in the court and that's not a basis just for sealing.

And I think the third thing here is that public interest is so compelling. This is not just a private commercial transaction. This involved allegations of systemic harassment at the highest levels of the national prominent leading football team, beloved by many in our, in our world here in D.C., Virginia, and Maryland.

And you know *The Washington Post* has written some very strong stories detailing tens of -- you know, many, many women making allegations of harassment, and that's something that the public has an interest in knowing in this proceeding in connection with that.

Now, there is a nondisclosure agreement, and that is

something that obviously the Court has to give some weight to, and I understand as a litigator myself that, you know, oftentimes clients want nondisclosure agreements, and that is just in settlement. But here, first of all, it's not dispositive, the Court is not bound by it, and the cases have made that clear, and we've cited a number of cases that involve similar kinds of confidentiality agreements.

And more importantly, as Your Honor pointed out, Mr. Donovan chose to bring this lawsuit, and when he did, that necessarily triggered the rights of the public to know why is he invoking the injunctive authority of this Court? What is -- which is a very significant thing.

And on that -- yes? Sorry.

THE COURT: Focus. This is all about why or why not the hearing on the motion to seal, strike, and reconsider should be open for the public. This is not about the public's complete right of access, because the Court -- even if the hearing is closed and the Court determines during the hearing that 95 percent of the information was not sealable, it can be made available to the public, and the public exercises its right to access.

The only real question is why does the hearing not need or should not be closed, with the possibility of inadvertent readings and the difficulty of clawing back that information once released if the Court does at some point

determine that that information should have been sealed?

MS. HANDMAN: Your Honor, I -- on that point, we cite a number of cases where hearings on sealing are not closed, including one in front of Your Honor, *White v.* --

THE COURT: That -- we're talking about this particular case. Each case is different.

MS. HANDMAN: Well, Your Honor, what we would argue and what we argue in our papers is we understand that there will be portions of the hearing where, for example, attorney-client privilege may be discussed, and to the extent that attorney-client privilege is not out there now already in public by virtue of some of these disclosures about the investigations, etc., those should be, you know -- we will get off the Zoom call, and those can be closed, and -- but to the extent it's discussing, for example, you know, what is the focus of this injunction, what was it, was it about --

THE COURT: We're not --

MS. HANDMAN: -- disputed agreements --

THE COURT: Ms. Handman, we're not here to discuss any of that. We're hear to discuss the sealing of documents. This case, a voluntary dismissal has been filed in this case. This case is over almost.

We're here to resolve motions that have been filed pre-filing of the dismissal request. That's it. We're not going into the substance of this case. We're here to determine

whether or not information that's currently under seal or that has been redacted should remain so, period.

MS. HANDMAN: Well, as I -- I understand, Your Honor, but I think what we're saying is portions of that hearing should be open where there is no longer a need for sealing or secrecy and don't have to be closed.

And I understand Your Honor has ordered the transcript. It obviously needs to be filed expeditiously, and we would urge that any redactions be very, very narrow, related just to privileged information that has not been put on the public record, but the Fourth Circuit again said that the public and the press have a right to contemporaneous access to see if there's documents and proceedings, and that's what this states here.

So there has to be a very compelling interest to close the doors -- or the Zoom doors, as we would say -- to a hearing where things other than attorney-client privilege are going to be discussed, and that's the premise that we've offered.

And we would urge the Court when you do go into the session, that you keep in -- you know, consider all the public disclosure that has occurred regarding the 2009 agreement, assuming it is the same agreement that was discussed in the Maryland litigation.

THE COURT: Thank you.

Opposition?

MS. SARCHIO: Your Honor, thank you, Your Honor. Christina Sarchio on behalf of the intervenor, the Team, opposing *The Washington Post*'s motion. Your Honor correctly decided to close today's hearing based on intervenor's motion that was founded on well-reasoned law and the facts, the unique facts of this case. The Court weighed the great concerns of the likelihood of inadvertent disclosure of privileged and confidential information against the public's right of access. The Court thoughtfully determined that closing the hearing to the public --

THE COURT: (Inaudible) at that time that there was the possibility that much of this information had already been released to the public.

MS. SARCHIO: Your Honor, that is not true at all. I am counsel in both cases, Your Honor. First, the Maryland case --

THE COURT: (Inaudible) on the accuracy or inaccuracy of that statement.

MS. SARCHIO: Yes, Your Honor, thank you.

THE COURT: Because the law gives this Court an absolute inherent right to change its mind.

MS. SARCHIO: Absolutely, Your Honor.

Your Honor, the case in Maryland did not involve any of the same parties here. That is a business dispute amongst

business partners. None of the parties here, neither the Team nor plaintiff nor defendant, are parties in that litigation.

THE COURT: It's not relevant.

MS. SARCHIO: Your Honor --

THE COURT: (Inaudible) has it been released publicly, period.

MS. SARCHIO: No, Your Honor. None of the documents at issue in this case have been filed in that case, either publicly or under seal, Your Honor. I can make that representation to the Court. What was filed was a news article that made a number of references to leaks, and the court in that case in Maryland held a hearing on the leaks of confidential business information.

We did have a hearing yesterday on this where the court interviewed people and held an evidentiary hearing, Your Honor, and found that there were -- there was no evidence of, of leaks from any of the parties in that litigation. There was a passing reference, Your Honor, in that case to the 2009 settlement agreement that appeared in a newspaper article that the parties responded to as part of the broader response, but there was nothing that was filed in that case that is at issue in this case.

The Team has not waived privilege with regard to any of the documents at issue in this case, and today's hearing, Your Honor, is about privilege generally, the Team's privilege

generally, we'd like to talk about what -- the assortment of documents that have been filed. It's not about one document. It's about an assortment of documents that have been filed in this case, what's privilege, what's not privilege, why we're asserting privilege, what we think should be confidential, so the hearing is much broader --

THE COURT: How do we not make that argument without referring to the specifics of the documents? And I'm saying that because the last hearing, out of an abundance of caution that the Court, you know, at some point in time closed and then found itself faced with an inaccurate representation of why it was closed in further filings from the parties, the first half of that hearing didn't even though the parties wanted it closed, didn't discuss any privilege or information that the Court deemed sealable or redactable.

The parties made a comment, and the Court said, okay, out of an abundance of caution, it would be based on what the Court understood then what the logistics of closing the public access line and how that would work and things, that out of an abundance of caution, we'll close the remainder of the hearing.

In the remainder of that hearing, which was approximately 30 minutes, at the conclusion of that 30 minutes, the Court concluded that probably about 45 seconds of that 30 minutes was probably redactable. Not a reason to seal or close the 30 minutes of that part of the hearing, either. So the

parties obviously made their arguments without specifically referring to specific factual information concerning the allegations in question, and they made their points well enough for the Court to make a ruling.

Why is this any different?

MS. SARCHIO: Your Honor -- and I, I read the transcript of that hearing, and I, and I noted Your Honor's comment at the end, there was very little that was indeed redacted, but the risk that there was -- there was an inadvertent disclosure. The risk that there would be even more inadvertent disclosures could be cured by sealing the record at the time, the hearing at the time, and then making the transcript available.

That strikes the right balance, Your Honor, between making sure that the parties are able to engage in a meaningful discussion with the Court about what's privilege, what's not privilege, without risking somebody saying something inadvertently and then having to -- either the cat's out of the bag or, or then having to shut down the proceeding so that --

THE COURT: Well --

MS. SARCHIO: -- we could go and close the hearing, and so by doing it this way --

THE COURT: We denied the public right of access because attorneys may be negligent. That's, that's your argument.

MS. SARCHIO: No, Your Honor. We --

THE COURT: (Inaudible) who have filed the motion, the opposition for the later motions and replies, who are prepared for that hearing, are somehow going to inadvertently let information spill out after over a week of preparation for the hearing, and the public should sacrifice based upon that because lawyers can't seem to not disclose information that they know they're not supposed to disclose.

Kind of like a trial, when you put a witness on the stand, and people say, well, without referring to the information that was told to you because it's hearsay, can you say why you did with that or why -- based on the information provided to me, I decided to investigate further, without disclosing the information?

We're not capable of doing that?

MS. SARCHIO: Your Honor, this Court -- both Judge Trenga and this Court have already sealed proceedings in this case, have already found that there is confidential information that's at issue.

THE COURT: (Inaudible) seal with regard to Judge Trenga is completely inappropriate because that was a hearing concerning a preliminary injunction, which is case dispositive. It's a completely different standard then.

MS. SARCHIO: Well, Your Honor, the Court -- Judge Trenga did determine that there was information that is

confidential that needed to be redacted and then referred the matter to Your Honor.

THE COURT: No, he didn't redact it.

MS. SARCHIO: The Court --

THE COURT: Ms. Sarchio, let's be accurate when we're discussing Judge Trenga's statements. He said: There may be information that maybe shouldn't be in the public venue. I can't make that determination, essentially just paraphrasing, at this juncture, and you're going to be filing stuff, and I can't make that decision, and so if any of the issues come up, talk to Judge Davis.

That's basically what Judge Trenga said. He didn't make any decision that obviously, oh, because of whatever occurred in previous hearings, this information is definitely redactable or sealable, and we should just in order to avoid this information getting into public view that could seriously harm one party or the other, that I'm sealing this hearing. He made no such statement.

MS. SARCHIO: Well -- correct --

THE COURT: All he said is: I'm sealing this because there may, and if you want to discuss that issue with a lot of other filings you'll probably be filing in this case later on, take those issues up with Judge Davis.

MS. SARCHIO: Right, but there was a recognition, Your Honor, that this is a unique case. As Your Honor pointed

out earlier, these cases need to be decided whether to close them to the public or not on a case-by-case basis. This is a case that involves a dispute among lawyers about their respective legal work, and it does involve privileged and confidential information. Your Honor has already decided that some things need to be redacted, that the attorney-client privilege applies.

So going back to your question, it's not about inadvertent disclosure that people make to work things out. If you want to have a discussion --

THE COURT: Ms. Sarchio, when the Court speaks, you don't.

MS. SARCHIO: I'm sorry to interrupt, Your Honor.

THE COURT: Redact any attorney-client privilege information. I didn't say it necessarily applies. I'm saying if it applies, that's something that probably will be redacted and sealed. That's what I said.

This case is not any more unique than any others. There have been motions filed, but this case, which, by the way, Judge Trenga unsealed, is about accusations, yes, attorneys against attorneys, and whether they performed their job well or whether they did some bad things.

None of that -- making those arguments don't necessarily require parties to divulge confidential information, commercially, proprietary, sensitive information,

or attorney-client confidential communications. You made that argument in the first couple of paragraphs of the complaint.

The plaintiff said she did -- she probably willfully did this, and it's harming my reputation, and none of that involved confidential communication. None of that involved what would have been information redacted.

So the arguments can be made. This case is no more significant than any other case this Court has to rule on when it comes to redacting information because the standard for redacting and sealing remains the same in every case.

MS. SARCHIO: Yes, Your Honor. I wanted to make two points. One, just going back to the court in Maryland, just to note for the record that in that case, which involves just a business dispute, the court held a number of hearings under seal closed to the public. Even though it had granted *The Washington Post*'s motion to intervene, it still excluded *The Post* and, and the public from a number of hearings. Yesterday was the first time that the court openly held its hearing and did that with a specific intent.

THE COURT: Well --

MS. SARCHIO: Your Honor --

THE COURT: -- (inaudible) if you go back in front of that court again.

MS. SARCHIO: I'm sorry, Your Honor?

THE COURT: And if I were that court, your point

would be made, but I'm not.

MS. SARCHIO: Yes, Your Honor.

The only reason the intervenor has, has moved in this court, Your Honor, is to assert privilege, to be able to have a meaningful and frank and open discussion about its privilege, assertion of privilege and privacy and confidentiality over documents that have been filed in this case, frankly, without its consent.

In order to have a meaningful discussion, Your Honor, and not a theoretical discussion, then it needs to be closed so that we could, we could have again a more meaningful and honest discussion with the Court about why we think certain things should be privileged and should be -- or are privileged, should be kept under seal, and what other things we think should be under seal for other reasons.

I'd like to point to the -- a case that we cited in our briefs, Your Honor, the *Copley* case in the Ninth Circuit, which I appreciate is in a different jurisdiction, but there's just not a lot of body of case law on closing hearings on motions to seal, but in that case, the Ninth Circuit felt that the district court's decision to close the hearing on a motion to seal was sensible because that way the court could hear the private explanation of why the case should be sealed, which will contain not only the facts that the parties hope to keep secret but the reasons for keeping those facts under seal, and

so that's what we're hoping to do here, Your Honor, is again having a meaningful discussion.

There is no right of access, the public's right of access to a motion such as this, which is a non-dispositive motion on a civil issue, and the Court has carefully balanced our interests in being able to have an open and frank discussion, the risk of inadvertent disclosure with the public's right of access, and it found that the proper balance is by closing the hearing and then making the transcript available to the public once the opportunity to, to review to see if there are any redactions that are necessary or apply.

That's, that's a sensible approach, Your Honor. Your Honor has already reached that decision. *The Post* hasn't provided any compelling reason why the Court should reconsider that decision, and so we respectfully request that the Court deny *The Post*'s motion.

THE COURT: So why did we begin our argument with avoiding inadvertent disclosure if you ended your argument with in order to have a frank discussion, we have to divulge essentially this confidential information? It's one or the other. Is the divulging of information, your concern about it being inadvertent, or do you intend to divulge what you believe is sensitive, confidential information and/or attorney-client privilege information, and is your intent to do that during the hearing on the motion to seal, strike, and reconsider?

MS. SARCHIO: Your Honor, everything that intervenor has filed with the Court, we have been very careful to make things as public as possible, and if you look at our filings, Your Honor will see that. We -- our goal is not to have more things to have to file under seal. Our goal is to file as much as we can in the public record, hoping that the information and the arguments, the legal arguments speak for themselves, without necessarily going into the facts and details of it.

I just don't know, Your Honor, I would like to have an open and frank discussion. There is a great risk of inadvertent disclosure. I think it's, it's both, Your Honor. It's both arguments.

THE COURT: The Court ruled on these motions without divulging confidential information.

MS. SARCHIO: I'm so sorry, Your Honor, I didn't hear the Court.

THE COURT: I'm confused on why we feel a need to close a hearing to the public because the attorneys don't know whether or not they are capable of keeping their client's confidential information confidential and not inadvertently disclosing it. I mean, that's what we're paid to do.

MS. SARCHIO: My intent, Your Honor, at a hearing is to be able to get into some details and make some factual assertions, Your Honor, that I expect you'd be -- that are privileged, that would remain as privileged and would remain

sealed, but even, even without that, Your Honor, if we had this hearing in public, there's just a great risk that somebody is going to say something inadvertently, even if -- despite the best intentions, and we already had that happen once before in this case, and so given that the, that the public does not have an automatic right to access these kinds of hearings on motions to seal, the right balance is to then seal it, permit the parties to engage in a dialogue with the Court about privileged issues, and then to go back, and ideally if it's only a few minutes of the hearing that gets redacted, even better for the public, but if the Court has very specific questions -- and, Your Honor, I've been listening to Your Honor all day today. You're very specific. You get into the details, and in order for us to be able to meaningfully respond to some of your questions, I don't know how we can try to dance around privileged discussions.

THE COURT: Now, you made -- well, she made a comment, you made a comment saying Ms. Handman's representations essentially were inaccurate concerning information that we're talking about here, confidential, possibly privileged information that was released in the Maryland case.

You said that was not the case, that both were generic statements. She made a specific reference to a declaration submitted by, let's just say, Team owner that seem

to talk about the allegations supporting the agreement that we have been not trying to discuss.

What was she referencing -- she referenced specifically a declaration that -- and the information that came or flowed from that appears to be information that the Court has tried to inform the parties should be redacted from previous motions to seal, which would specifically be information revolving or involving this case.

MS. SARCHIO: So three points in response, Your Honor. First, Mr. Snyder is not a party to this. This is the Team asserting its privilege. That's the first point.

Second point, Your Honor, is that the discussion that we are hoping to have today is about the Team's broad assertions of privilege, not about any one specific document or a specific reference. So it's, it's a broader discussion that we're hoping to have with the Court today.

And three, again, you'd have to look at those declarations filed in Maryland. Mr. Snyder was responding to a declaration and an exhibit that was submitted in the action regarding leaks to *The New York Times* and various newspapers about certain issues, including the business deal, including a confidential settlement agreement and other things, Your Honor, and he was responding to those assertions in the declaration.

No documents were attached other than a public filing, *The Washington Post* article, but there was no

confidential information filed in that case again either publicly or under seal that are at issue in this case. And so we are somewhat talking about apples and oranges, Your Honor, in terms of what, what those allegations are in those cases versus what the allegations and the, and the parties are in this case. And so it's not -- they're not the same thing, Your Honor.

And, and again, that case and that judge was looking into leaks, not the voluntary waiver of privileged information, and it was in response to allegations and was citing to things that were already in the press, Your Honor.

MS. HANDMAN: Your Honor, if I might -- and you're exactly right. I mean, we attached the declarations that were filed, and Mr. Snyder is not just some random guy. He's not only the majority owner of the Team; he was an accused person, person accused of the sexual harassment. He was a party to the settlement agreement. He was the subject of the internal investigations.

And he wrote in his declarations, sworn declarations filed in public at his request, he said the underlying allegations were meritless, quote, that, quote, no evidence of wrongdoing was found after an investigation by a well-respected law firm, closed quote, and that the insurance carrier decided to settle notwithstanding the absence of wrongdoing.

That's what he wrote in his declaration, and he

attached *The Washington Post* article, and in the prior filing, he attached *The New York Times* article, but that's what he said in his own words in his declaration.

THE COURT: Well, I'm going to --

MS. SARCHIO: Your Honor --

MS. HANDMAN: And I would (inaudible).

THE COURT: Ms. Handman.

MS. HANDMAN: Yes.

THE COURT: The court reporter can only take down one person at a time.

MS. SARCHIO: Thank you, Your Honor.

MS. HANDMAN: Okay.

MS. SARCHIO: With respect, I would ask Ms. Handman to read the entire --

THE COURT: Ms. Handman, let Ms. Sarchio speak, please.

MS. SARCHIO: I would ask Ms. Handman to read the entire quote because Mr. Snyder isn't just saying that in a vacuum. He is responding to an assertion made by another party in that case against him.

THE COURT: What difference does it make how he places the information in the public forum, whether it's his own doing or he's responding? Placing it in the public forum is placing it in the public forum, which means why should it be taken back out? The public already has access to it.

If he has inadvertently placed it in the public forum, that's one thing, because then you don't want to compound an already made mistake, but he didn't. You specifically said he's responding, which means he intentionally placed that information in the public forum, the exact thing -- part of which is the exact same information that the parties are talking about to be redacted here.

MS. SARCHIO: Again, Your Honor, respectfully, the Team, and not Mr. Snyder, have intervened here to assert a broader privilege. We're not talking about just one document here. We're talking about an assertion of privilege over a number of documents that have been filed in this case under seal that are -- that the Court is considering.

And so there's more, there's more than just that one assertion of one document. It's the Team that's asserting the privilege here, Your Honor, not anyone else, not any principals that are, that are asserting the privilege in this case.

And again, that case involves a business dispute. That is just -- that's, that's just --

THE COURT: I really don't care what it involves. All I care about, what information is or is not in the public forum and how it got there and is it the same information that the parties are trying to keep out of the public forum in this motion. That's all I care about.

MS. HANDMAN: Your Honor, I'm happy to read the two

paragraphs from Mr. Snyder --

THE COURT: Ms. Handman --

MS. HANDMAN: Sorry?

THE COURT: Be quite specific. Unless you can reference it differently, Ms. Sarchio said that that was one piece of information. During this hearing, they intend to discuss a lot of other what she considers confidential, privileged, private information.

So what, we want to publish right of access to -- and the possibility of inadvertent disclosure in having to deal with the logistics for 5 percent of the 100 percent of information that's going to be discussed?

MS. HANDMAN: Your Honor, obviously, I don't -- I'm not privy to the documents, so I can't weigh in on how much would be involved or not. What I do know is that to the extent that there's discussion of the investigations that were done in connection with the settlement agreement, with -- in connection with the amount of the settlement with the --

THE COURT: The information that has been disclosed is the information you said that was placed in this declaration.

MS. HANDMAN: Right.

THE COURT: So the Court has an absolute right to say, well, now that that's in the public view, the public has access to it now. So giving them access to the hearing doesn't

change that. They already have access to it if it's in the public forum. Why do they need access to the hearing to get exactly the same information they already have access to?

MS. HANDMAN: Your Honor, I presume that the hearing would confirm that this is indeed the same settlement agreement that was the focus of this --

THE COURT: It's not the purpose of this hearing to confirm or deny something that *The Washington Post* can report in an article.

MS. HANDMAN: So I think that would be incidental to it --

THE COURT: You have the declaration in front of you.

MS. HANDMAN: I do.

THE COURT: If it was made public, then it's public.

MS. HANDMAN: That's correct.

THE COURT: You don't need to make it public a second time in a hearing that will be taking place after this one. It's already --

MS. HANDMAN: Well --

THE COURT: -- (inaudible) access.

MS. HANDMAN: I mean, for example, *The Post* story gives great detail about the settlement agreement, but they --

THE COURT: (Inaudible) on whether the public has access to it already, so why do they need access to this hearing?

MS. HANDMAN: Well, for example, as, as the article says, we don't know for a fact that this is the same --

THE COURT: And if the information is confidential and the Court deems it redactable and sealable, you don't have the right to have access to it, but that doesn't prevent a frank discussion.

But if the Court deems during a hearing that the public has a right to it and they don't have the right to redact it, the public will get access to it, but --

MS. HANDMAN: Your Honor, as you know --

THE COURT: -- (inaudible) a hearing should be closed or not.

You're mixing apples and oranges. All we're talking about is whether the hearing should be closed. Your argument is public access. My response is the public has access to the information that's already in the public forum, the public will have access to the information that is divulged during the hearing that the Court does not deem sealable, and the Court and the public have right of access to argue its public right of access before this hearing.

That's why when motions are made pursuant to the local rules of this Court, notice must be given to the public, a nonconfidential memorandum is placed out, and the public has the right to be heard prior to this hearing.

MS. HANDMAN: Correct, Your Honor.

THE COURT: The only public the Court has heard from would be you, Ms. Handman.

MS. HANDMAN: I appreciate that, and I thank you very much for the opportunity. What I would say is that there's a presumption of access to hearings, that it is not the -- as you know, Your Honor, most hearings are open to the public. It is the extraordinary hearing that is not, and a need to close a hearing and have a compelling interest --

THE COURT: I don't see right now a basis to provide the public access to information that they already have access to, to open an entire hearing that may divulge lots of other confidential information, whether any burden or not, in order to acquire a succinct but broad discussion concerning whether or not information should be sealed.

The only information I've heard that the public appears to have an interest in is information that's already in the public forum based upon Mr. Snyder's declaration. So why open the rest of the hearing up to something that no party has argued the public has any interest in at all?

MS. HANDMAN: Well, I mean, for example, Your Honor, Mr. Snyder says that the allegations were meritless and that they were found (inaudible).

THE COURT: That's not sealable. That wouldn't have been sealable if -- that's not sealable when we have the hearing. If they're not clear about it, that's going to be

made clear to the parties at that hearing. The fact that Mr. Snyder said the merits are, you know -- all the allegations are meritless, that's not sealable. So the public would have access to that.

MS. HANDMAN: But for example, Your Honor, he also says --

THE COURT: Because you have the declaration, and I'm sure therefore it will be placed once again in the public forum.

MS. HANDMAN: I'm sorry, I'm telling my husband not to turn on the printer.

The, the -- what I was going to say, Your Honor, is he also says that these investigations found no wrongdoing. Now, to the extent that the documents disclose and deal with that, that's something the public has a right to check is that accurate. He's made an input in the issue --

THE COURT: You're wrong then, Ms. Handman. The closure of the hearing, even if the Court opens a hearing, the public doesn't have a right to speak. The public has --

MS. HANDMAN: I agree.

THE COURT: -- (inaudible) listen, that right of access.

The public is not a party. They don't have the right to stand up in a motion heard, whether it's over Zoom or in open court. At 401 Courthouse Square, in a motion to seal,

strike, and reconsider, no one sitting in the audience in that courthouse would have the right to stand up and say anything. They would only have the right to access to the information that is said, which is exactly what the Court is going to provide them and has been provided them, if your argument and representations are true, already. The Court sees no further reason to open the hearing.

The motion to intervene for the limited purpose of making this argument, obviously, was granted.

MS. HANDMAN: Thank you, Your Honor.

THE COURT: The motion to reconsider was granted because -- a portion of it because the Court has reconsidered. The portion of the Court's ruling closing the hearing, which essentially is asking to vacate that portion of the Court's previous order, is denied.

Anything further in this matter?

MS. HANDMAN: No, Your Honor. I look forward to seeing you January 29 on our motion to intervene -- our first motion to intervene.

THE COURT: Well, it would have been nice to see people in person at 401 Courthouse Square, but I doubt that will occur either.

MS. HANDMAN: I fear you're right, Your Honor.

THE COURT: You take care.

MS. HANDMAN: Thank you. We will exit from Zoom.

MR. CONNOLLY: Thank you, Your Honor.

THE COURT: Thank you.

(Which were all the proceedings had at this time.)

CERTIFICATE OF THE TRANSCRIBER

I certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

/s/
Anneliese J. Thomson